

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

WP(C).No. 4347 of 2007(P)

PETITIONER:

M/S. T.O. ABRAHAM & CO.,
WINDSOR COMPLEX, KODIMATHA, KOTTAYAM,
BEARING REGISTRATION NO.1340/05, REPRESENTED BY
ITS MANAGING PARTNER, T.O. ABRAHAM.

BY ADV. SRI.BECHU KURIAN THOMAS
SRI.NAVEEN SHERRY LUKOSE

RESPONDENTS:

1. KERALA WATER AUTHORITY,
JALA BHAVAN, THIRUVANANTHAPURAM.
2. CHIEF ENGINEER (C.R),
KERALA WATER AUTHORITY, HOSPITAL ROAD, KOCHI.
3. CHIEF ENGINEER PROJECTS,
FACT ENGINEERING WORKS, KOCHI-687006.

BY STANDING COUNSEL SRI.M.DINESH
GOVERNMENT PLEADER SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 01/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.4347 OF 2007-P

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Dated this the 1st day of March, 2007.

JUDGMENT

Heard.

2. The tender submitted by the petitioner, a partnership firm with Registration No.1340/2005, was rejected by the respondents. The petitioner, therefore, seeks direction to refund the EMD deposited by it in connection with the said bid.

3. The petitioner and ABG Engineers (P) Limited, the successful bidder and the Kerala Water Authority are parties to WP(C).No.34058/2005 filed by the petitioner challenging the decision of the Water Authority to treat the petitioner as unqualified in the pre-qualified round.

4. In so far as the issue of return of EMD is

concerned, the stand taken by the Water Authority is that M/s.T.O.Abraham & Co., a partnership firm has raised an objection to the release of the Bank Deposit Certificate. It is on record that O.S.No.119/2004 is pending before the Sub Court, Thiruvalla for settlement of accounts of a partnership firm M/s.T.O.Abraham & Co. According to the petitioner, which is also M/s.T.O.Abraham & Co., the firm which is subject-matter of O.S.No.119/2004 is an earlier one with Registration No.839/2002 and the writ petitioner's firm is registered as 1340/2005, though with the same name. It is pointed out by the learned counsel for the petitioner that the writ petitioner has nothing to do with the firm which is subject-matter of O.S.No.119/2004. According to the Water Authority, the partners of the firm have raised objection to the release of the Bank Deposit Certificate.

5. While the name of the writ petitioner firm and the firm involved in O.S.No.119/2004 may be the same, the Bank Deposit Receipt provided as EMD by the writ petitioner firm (1340/2005) need not necessarily be the asset of the firm involved in O.S.No.119/2004. It is unnecessary that

the Water Authority is left in the muddle involving the controversy regarding the identity of such firms. Equally, it may not be for this Court, as of now, to resolve the disputes having regard to the disputed questions of facts and to direct the Water Authority to return the EMD to the writ petitioner.

In the aforesaid circumstances, this writ petition is disposed of directing that the Water Authority will place the said Bank Deposit Certificate before the Sub Court, Thiruvalla in O.S.No.119/2004 and that Court will, on an application by the writ petitioner firm, viz., M/s.T.O.Abraham & Co. with Registration No.1340/2005, hear that firm and parties to the said suit and consider the matter of release of Bank Deposit Certificate. A decision on the application shall be taken by the Sub Court within a period of three months from the date of receipt of a copy of this judgment. The petitioner shall place before the Sub Court a copy of the writ petition along with a copy of this judgment.

**THOTTATHIL B. RADHAKRISHNAN,
JUDGE.**

Sha/-